

Private foundation; charitable trust granting scholarships.

An exempt charitable trust whose sole purpose is to grant scholarships to students graduating from both public and private high schools in a city and whose trustees are officers of, or are elected by the membership of, a local civic league exempt under section 501(c)(4) of the Code is a supporting organization within the meaning of section 509(a)(3) and thus not a private foundation.

Advice has been requested whether the charitable trust described below is a supporting organization within the meaning of section 509(a)(3) of the Internal Revenue Code of 1954 and thus not a private foundation.

The trust is organized and operated exclusively for charitable purposes and is exempt from Federal income tax under section 501(c)(3) of the Code. Its purpose as set forth in its articles is to grant college scholarships to students graduating from the high schools, both public and private, in a particular city. Five of the seven trustees are elected by the membership of a local civic league. The president and treasurer of the league automatically serve as the other two trustees. None of the trustees are disqualified persons with respect to the trust (within the meaning of section 4946) except in their capacity as trustees.

The league was created to render civic service for the promotion of the welfare of the citizens of the city and is exempt from Federal income tax under section 501(c)(4). If the league were an organization described in section 501(c)(3), it would be excluded from the definition of a private foundation by virtue of section 509(a)(2) because of the sources of its financial support.

Section 509(a) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than those referred to in section 509(a)(1) through (4).

Section 509(a)(3) of the Code describes a supporting organization as one which--

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in section 509(a)(1) or (2).

Section 509(a) of the Code provides that, for purposes of section 509(a)(3), an organization described in section 509(a)(2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in section 509(a)(2), if it were an organization described in section 501(c)(3).

Section 1.509(a)-4(c)(1) of the regulations provides that an organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) of the Code if its articles of organization:

(i) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A);

(ii) Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes referred to in subdivision (i) of this subparagraph;

(iii) State the specified publicly supported organizations on whose behalf such organization is to be operated (within the meaning of paragraph (d) of this section); and

(iv) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations referred to in subdivision (iii) of this subparagraph.

Section 1.509(a)-4(c)(2) of the regulations indicates that in satisfying the "organizational test," the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes set forth in section 509(a)(3)(A) of the Code. An organization which is "operated, supervised, or controlled by" or "supervised or controlled in connection with" one or more section 509(a)(1) or (2) organizations to carry out the purposes of such organizations, will be considered as satisfying the "organizational test" if the purposes set forth in its articles are similar to, but no broader than, the purposes set forth in the articles of its controlling section 509(a)(1) or (2) organizations. If, however, the organization by which it is operated, supervised, or controlled is a publicly supported section 501(c)(4), (5), or (6) organization, the supporting organization will be considered as meeting the organizational test if its articles require it to carry on activities which are exclusively religious, charitable, scientific, literary, educational, or for the prevention of cruelty to children or animals within the meaning of section 170(c)(2).

Section 1.509(a)-4(d)(2)(i) of the regulations provides that the articles of a supporting organization must designate each of

the specified organizations by name, unless the supporting organization is "operated, supervised, or controlled by" or "supervised or controlled in connection with" such organizations, and the articles of organization of the supporting organization require that it be operated to support or benefit one or more beneficiary organizations which are designated by class or purpose.

Section 1.509(a)-4(e)(1) of the regulations provides that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefitted by the specified publicly supported organizations.

Section 1.509(a)-4(g)(1) of the regulations provides that a supporting organization is "operated, supervised, or controlled by" one or more publicly supported organizations if a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, its members, officers, or the membership of the publicly supported organizations, even though the supporting organization's governing body is not comprised of representatives of the publicly supported organizations for whose benefit it is operated.

Section 1.509(a)-4(j)(1) of the regulations provides that under section 509(a)(3)(C) of the Code a supporting organization may not be controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more publicly supported organizations.

The civic league, by reason of its sources of support, is deemed to be a publicly supported organization described in section 509(a)(2) of the Code. The league elects five of the seven trustees of the trust and two officers of the league automatically serve as the other two trustees. Thus, the league controls the trust.

The trust, by its terms, is required to carry on activities which are exclusively charitable within the meaning of sections 170(c)(2) and 501(c)(3) of the Code and its charitable activity is the granting of scholarships. See Rev. Rul. 69-257, 1969-1 C.B. 151.

In a technical sense, such an organization cannot be one which "is organized, and . . . operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of" the section 501(c)(4), (5), or (6) organization it is deemed to support. The "supporting" organization is a legal charity and, therefore, cannot be organized and operated to

further the general purposes of a noncharitable organization. Thus, the general requirements of sections 1.509(a)-4(c), (d), and (e) of the regulations are inapplicable to organizations supporting section 501(c)(4), (5), and (6) organizations. This is specifically recognized in section 1.509(a)-4(c) in its reference to section 509(a)(3)(A) of the Code wherein it provides that if a supporting organization is operated, supervised, or controlled by a publicly supported section 501(c)(4), (5), or (6) organization, the supporting organization will be considered as satisfying the "organizational test" of section 509(a)(3)(A) "if its article require it to carry on charitable, etc. activities within the meaning of section 170(b)(2)." Although this rule is not specifically restated in section 1.509(a)-4(e) of the regulations pertaining to the "operational test" of section 509(a)(3)(A), it is equally applicable in determining whether a supporting organization satisfies that test.

Thus, since the trust is organized and operated exclusively for charitable purposes and is controlled by the civic league, it is deemed to satisfy the requirements of section 509(a)(3)(A) of the Code.

The trust is "operated, supervised, or controlled by" a publicly supported organization within the meaning of section 1.509(a)-4(g) of the regulations and thus satisfies the requirements of section 509(a)(3)(B) of the Code.

Finally, the trust is not controlled directly or indirectly by a disqualified person (as defined in section 4946 of the Code) other than its trustees in their capacity as trustees, and other than an organization described in section 509(a)(2) and thus, the trust meets the requirements of section 509(a)(3)(C).

Accordingly, the trust is a supporting organization within the meaning of section 509(a)(3) of the Code and thus not a private foundation.